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## Schuster v. State Respondent's Brief Dckt. 38389

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IN THE SUPREME COURT OF THE STATE OF IDAHO

**COPY**

RYLAND DOYLE SCHUSTER, )  
 )  
 Petitioner-Appellant, ) NO. 38389  
 )  
 vs. )  
 )  
 STATE OF IDAHO, )  
 )  
 Respondent. )

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**BRIEF OF RESPONDENT**

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**APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF PAYETTE**

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**HONORABLE SUSAN E. WIEBE  
District Judge**

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**FILED - COPY**

**AUG 12 2011**

Supreme Court \_\_\_\_\_ Court of Appeals \_\_\_\_\_  
Entered on ATS by \_\_\_\_\_

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## STATEMENT OF THE CASE

### Nature Of The Case

Ryland Schuster appeals from the district court's order denying his I.R.C.P. Rule 60(a) Motion for Relief from Judgment or Order.

### Statement Of Facts And Course Of The Underlying Criminal And Original Post-Conviction Proceedings

The district court summarized the procedural history of Schuster's case prior to Schuster's current successive post-conviction proceeding:

On March 15, 2002, [Schuster] pleaded guilty to one count of Rape, in case no. CR-FE-02-01459, under Idaho Code § 18-6101 and to two counts of Sexual Abuse of a Child, in case no. CR-FE-02-01479, under Idaho Code § 18-1506. On September 6, 2002, this Court then sentenced the Defendant to a period of fifteen (15) years in the custody of the Idaho State Department of Corrections, with nine (9) of those years being fixed and six (6) left indeterminate, in each case, with both cases to run concurrent with each other. Thereafter, on January 6, 2003, [Schuster] filed a Motion for Rule 35 Leniency for each case, which this Court denied in an order entered on March 10, 2003. On August 5, 2003, [Schuster] then filed an Application for Post-Conviction Relief. This Court granted [Schuster's] application on April 2, 2004, and ordered that [Schuster's] sentence be set aside and that [Schuster] be resentenced. Pending resentencing, [Schuster] was released, but rearrested pursuant to a probable cause hearing fully developed in the record. On June 18, 2004, [Schuster] was resentenced in each case to a period of fifteen (15) years in the custody of the Idaho State Department of Corrections, with nine (9) of those years being fixed and six (6) left indeterminate, with both cases to run concurrent with each other.

(R., pp.124-125.) Schuster filed a Rule 35 motion to correct an illegal sentence (R., pp.62-90), which was denied on January 10, 2005 (R., pp.124-131). Schuster's convictions and sentences were affirmed by the Idaho Court of Appeals on December

15, 2005.<sup>1</sup> State v. Schuster, Docket Nos. 30979 & 30996, p.1 (Ct. App. Dec. 15, 2005) (unpublished).

#### Course Of The Successive Post-Conviction Proceeding

Schuster filed a pro se successive petition for post-conviction relief on November 29, 2007 (R., pp.3-17), the state filed an answer (R., pp.18-36), and on January 16, 2008, Schuster filed an objection to the state's answer with a lengthy set of attachments (R., pp.37-252). Over two years later, on April 14, 2010, the district court issued a "Notice of Proposed Dismissal," stating:

Pursuant to Rule 40(c) of the Idaho Rules of Civil Procedure, notice is hereby given that in the absence of a showing, by written affidavit filed with this Court on or before **April 30, 2010**, setting forth specific facts justifying retention and setting forth a specific time table for actions necessary to make the case ready for trial setting and processing the specific matters left at issue therein, all pending matters in the following case will be dismissed for inactivity.

(R., p.253 (bold original).) On April 26, 2010, Schuster filed a document entitled "Affidavit of Ryland Doyle Schuster and Motion to Ask for 30 Day Time Exstention [sic]," stating that he needed an extension of time (presumably to respond to the district court's Notice of Proposed Dismissal) because the Idaho Department of Correction does not have a law library, it is very hard to obtain legal material, and he had contacted a paralegal for assistance. (R., pp.254-256.) On June 1, 2010, the district court

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<sup>1</sup> While Schuster's appeal was pending, he filed an "Application and Petition for Peremptory Writ of Mandate" with the Idaho Supreme Court (R., pp.132-150), which was denied on February 22, 2005, on the ground that there was already an appeal pending which raised the same issues (R., p.192). Schuster's petition for review of the denial of his petition for a writ of mandate was denied March 30, 2005. (R., pp.193-196.)

entered an order dismissing without prejudice Schuster's successive post-conviction case for want of prosecution, stating:

This District Judge finds that no pleading, motion or appearance has been filed and no action taken in the above-entitled cause, and fourteen days notice has been given to the parties herein, and no good cause has been shown for such non-action of the parties for a period exceeding six (6) months, pursuant to I.R.C.P. Rule 40(C) [sic]

(R., p.257.) Schuster filed a proposed order to reopen his successive post-conviction case, which the district court denied on June 15, 2010.<sup>2</sup> (R., p.258.)

On August 2, 2010, Schuster filed a Motion for Relief from Judgment pursuant to I.R.C.P. Rule 60(a) (clerical mistake or error) (hereafter "Rule 60(a)"), with a supporting affidavit. (R., pp.1-2.) A hearing on that motion was held November 5, 2010. (R., p.2.) It appears Schuster was not physically present for that hearing, and the record does not indicate whether Schuster participated in the hearing telephonically. (R., pp.259 (denial of "Transport Order"); see pp.262, 265.) Schuster filed an appeal with the Idaho Supreme Court on December 20, 2010. (R., pp.260-264.) On December 23, 2010, the district court entered a written judgment and order denying Schuster's Rule 60(a) motion, stating it had "heard the Petitioner's Motion on November 5, 2010, and issued its Order Denying the Petitioner's Motion for Relief of Judgment under Rule 60(a) . . . ." (R., p.265.)

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<sup>2</sup> It appears the district court wrote "denied" and the date (June 15, 2010) at the bottom of Schuster's proposed order to reopen his successive post-conviction case. (See R., p.258.)

## ISSUE

Schuster states the issue on appeal as:

Did the district court abuse its discretion by dismissing Appellant's reply to the Court's purposed dismissal of the Petition for allegedly failing to prosecute and/or inactivity when the record demonstrates Appellant's timely filing?

(Appellant's Brief, p.3 (italics and underlining omitted).)

The state rephrases the issue on appeal as:

Has Schuster failed to provide an adequate record on appeal to permit the Court to review his claim of error?



## ARGUMENT

### Schuster Has Failed To Provide An Adequate Record On Appeal To Permit The Court To Review His Claim Of Error

#### A. Introduction

Schuster contends the district court erred in denying his Rule 60(a) motion to correct an alleged clerical error. (Appellant's Brief, pp.3-7.) However, because Schuster has failed, on appeal, to provide the relevant clerk's record and transcript of the underlying motion, he has failed to provide this Court with a record sufficient for appellate review of his claim.

#### B. Schuster Has Failed To Provide An Adequate Record To Review The District Court's Rulings

Schuster argues that the district court erred by denying his "Motion to Correct Clerical Oversight under I.R.C.P. - 60(a)," which he filed, with a supporting affidavit, on August 2, 2010. (Appellant's Brief, p.4; see R., pp.1-2 (Register of Actions ("ROA") entries for 8/2/2010<sup>3</sup>.) Although not entirely clear, it appears that Schuster is claiming his Rule 60(a) motion should have been granted because a "clerical error" occurred when the district court did not allow for three days mailing before dismissing his petition pursuant to Rule 40(c). (Appellant's Brief, pp.3-7.) A hearing on Schuster's Rule 60(a) motion was held November 5, 2010, during which the district court issued its order

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<sup>3</sup> Inasmuch as the only Register of Actions entries for August 2, 2010 are "Petitioner's Motion for Relief from Judgment or Order" (and supporting affidavit), the state assumes it is the same document that Schuster refers to as his "Motion to Correct Clerical Oversight under I.R.C.P. - 60(a)" (Appellant's Brief, p.4), and the same document identified by the district court's "Judgment and Order Denying 60(a) Motion" (R., p.265).

denying Schuster's motion. (R., p.2 (ROA entries for 11/5/2010); p.265 (Judgment and Order Denying 60(a) Motion, entered December 23, 2010, stating: "The Court having heard the Petitioner's Motion on November 5, 2010, and issued its Order Denying the Petitioner's Motion for Relief of Judgment under Rule 60(a) . . .").)

However, Schuster has failed to present the following documents and transcript, which are essential for reviewing the issue he presents on appeal: (1) his Motion for Relief from Judgment or Order, filed August 2, 2010 (see R., p.1), (2) his Affidavit in Support of Petitioner's Motion for Relief from Judgment or order, filed August 2, 2010 (see R., p.2), (3) a transcript of the hearing on his Motion for Relief from Judgment, held on November 5, 2010 (see R., pp.2, 265), and (4) the "Court Minutes" from the November 5, 2010 hearing (see R., p.2 (notation of "Court Minutes" as action taken that date)).

On appeal, the appellant bears the burden of presenting a sufficient record to evaluate the merits of the challenge. State v. Mowery, 128 Idaho 804, 805, 919 P.2d 333, 334 (1996); Slickpoo v. State, 126 Idaho 212, 214, 880 P.2d 242, 244 (1994); Roman v. State, 125 Idaho 644, 648, 873 P.2d 898, 902 (Ct. App. 1994); State v. Beason, 119 Idaho 103, 105, 803 P.2d 1009, 1011 (Ct. App.1991); State v. Murinko, 108 Idaho 872, 873, 702 P.2d 910, 911 (Ct. App. 1985). Without copies of Schuster's actual Rule 60(a) motion and supporting affidavit, and a transcript of the November 5, 2010 hearing on that motion, it is virtually impossible for this Court to determine the entire basis for the motion or the merits of Schuster's appeal. The following examples

demonstrate the problem created by Schuster's failure to provide an adequate record on appeal.

Schuster argues that his response to the district court's Notice of Proposed Dismissal, which gave him until April 30, 2010, to present "specific facts justifying retention and setting forth a specific time table for actions necessary to make the case ready for trial setting [etc.]" (R., p.253), was timely because he filed a motion for a 30-day extension of time to reply to the court's proposed dismissal – "which would extend the time to May 30, 2010" – and because he mailed his motion (for a hearing) and supporting affidavit on May 28, 2010, his reply was timely under the mailbox rule.<sup>4</sup> (Appellant's Brief, pp.3-4.) Schuster's argument wholly relies upon the deadline for his response to the district court's Notice of Proposed Dismissal being extended to May 30, 2010, as he requested. However, nothing in the record indicates that Schuster's motion for such an extension of time was granted by the district court – which *may* have been the reason the district court denied Schuster's Motion for Relief from Judgment or Order under Rule 60(a).

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<sup>4</sup> Schuster states:

On May 28, 2010, as shown by the Notary Seal and Certificate of Service, Appellant mailed the Motion and Affidavit requested by the Court from the Idaho State Correctional Institution, but was not received by the Court until June 2, 2010. See Exhibit – A hereto.

However, the Court issued its Order of Dismissal on June 1, 2010 without allowing for the three-days mailing provided by the Idaho Rules of Civil Procedures.

(Appellant's Brief, pp.3-4.)


Alternatively, the district court may have concluded that Schuster's motion for an extension of time to respond to the court's dismissal notice did not meet the criteria of that notice – "specific facts justifying retention and setting forth a specific time table for actions necessary to make the case ready for trial setting." (See R., p.253.) Without an adequate record on appeal, this Court cannot know the district court's precise ground(s) for denying Schuster's Rule 60(a) motion.

In the absence of an adequate record to support the appellant's claim, the Court will not presume error. Beason, 119 Idaho at 105, 803 P.2d at 1011; Murinko, 108 Idaho at 873, 702 P.2d at 911. Rather, missing portions of the record must be presumed to support the action of the trial court. Mowery, 128 Idaho at 805, 919 P.2d at 334. State v. Beck, 128 Idaho 416, 422, 913 P.2d 1186, 1192 (Ct. App. 1996). Stripped to its basic elements, Schuster is asking this court to presume error on a silent record. Because of Schuster's failure to provide an adequate record on appeal, this Court must presume that the district court's judgment and order denying Schuster's Rule 60(a) Motion for relief from Judgment or Order is supported by the missing portions of the record and the November 5, 2010 hearing on Schuster's motion, and is precluded from addressing the merits of this appeal.

CONCLUSION

The State of Idaho requests that the district court's denial of Schuster's Motion for Relief from Judgment or Order under Rule 60(a), I.R.C.P., be affirmed.


DATED this 12<sup>th</sup> day of August, 2011.

  
John C. McKinney  
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 2011, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

Ryland D. Schuster  
IDOC #67692  
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Boise, Idaho 83707

  
John C. McKinney  
Deputy Attorney General

JCM/pm